IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. 0. C. J.

WRIT PETITION NO. 3086 OF 2004

WITH

WRIT PETITION NOS.3087 & 3088 OF 2004

W.P. No.3086/2004:

Minakshi Tours & Travelling Services. ...Petitioner.
Versus
General Manager, Central Railways, Mumbai & Ors. ...Respondents.
.....

W.P. No.3087/2004:

Harison Travels. ...Petitioner.
Versus
General Manager, Central Railways, Mumbai & Ors. ...Respondents.
.....

W.P. No.3088/2004:

Mahavir Travels. ...Petitioner.
Versus
General Manager, Central Railways, Mumbai & Ors. ...Respondents.
.....
Mr. J. P. Cama with Mr.Rajesh Gehani for the Petitioner.
Mr. A.N. Samant for Respondent Nos.1 and 2.
Mr. V.N. Kantawalla for Intervenor.
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CORAM :DALVEER BHANDARI, C.J. &

DR. D.Y. CHANDRACHUD, J.

December 16, 2004.

P.C.:

These three petitions have been heard together since a common question has been raised. For convenience of reference, the facts of Writ Petition No.3086 of 2004 have been dealt with in this order. Counsel are agreed that the facts of all the three cases are similar.

On 29th December 2002, an agreement was entered into by which the Petitioner was granted a licence to act as an agent of the Government for the sale of Railway tickets through computerized P. R. S. terminals. The licence was for a period of three years expiring on 29th December 2005 and was terminable by either party upon furnishing a notice of three months in writing. Clause 22 of the agreement provided as follows :

> "22. The agreement shall, subject to the provisions herein contained remain in force for three years w.e.f.

29.12.02 and expire on 29.12.2005 provided that other party shall be at liberty to terminate the same earlier by giving three months notice in writing to the other without assigning any reason where from the accounts shall b e adjusted."

The licence has been terminated by the Chief Commercial Manager of the Central Railway on 15th September 2004. The letter records that "Pilot Project of Computerized Ticket Service Provider Licence (CTSPL) has been reviewed by the Railway Administration and it has been decided to terminate the scheme of allotment of CTSPL licences issued in favour of all the three CTSPL licensees in Mumbai area". In terms of the agreement, the Petitioner was informed that the licence stands terminated with effect from 15th December 2004 upon the expiry of the notice period. This decision has been impugned in these proceedings.

Learned Counsel appearing on behalf of the Petitioner submitted that (i) though the licence which was granted in favour of

the Petitioner was in pursuance of a decision taken on an experimental basis for the appointment of Computerized Ticket Service Provider Licensees; the term of the licence was three years and the experiment could not have been rescinded within the aforesaid period; (ii) acting on the basis of the terms of the agreement, the Petitioner has made a substantial investment of funds for the project; and (iii) the Respondents are estopped from cancelling the licence on the basis of the principle of promissory estoppel or, in the alternative, from disturbing the legitimate expectations of the Petitioner that the licence would be allowed to run its full term of three years.

There can be no gainsaying the principle that a public authority even in its contractual dealings is subject to the mandate of Article 14. The decisions of a public authority have to be guided by reason and informed by public interest. Governed as it is by Article 14, a public body cannot be heard or seen to act on caprice or whim. In the backdrop of this well settled principle, we must now proceed to evaluate the action of the Respondents. The licence that was granted

to the Petitioner was terminable by three months' notice on either side. Clause 22 to which a reference has been made earlier specifically renders the licence terminable with notice. An affidavit in reply has been filed on behalf of the Respondents wherein it has been stated that after the licence agreement was executed on 29th December 2002 in favour of the Petitioner and two other agents, a petition was filed in this Court (W.P. 213 of 2003) by one G. M. Bhavsar, seeking the issuance of a writ of Mandamus for considering the name of the Petitioner therein for the grant of a licence or, in the alternative, for fixing the period during which the project would be operated on an experimental basis. In that petition, the Central Railway Administration filed an affidavit recording that in January 2003, terminals were allotted to three agents on an experimental basis. The Railway Federation had protested against the allotment of these terminals on the ground that the staff strength posted at Railway Reservation Centres would be reduced drastically. As a result, the Union took up the issue first with the Zonal Railway and then with the Railway Board. During the course of the last meeting which was convened by the Railway Board with the Federation at

New Delhi on 25th January 2002, the Railway Board decided to defer the decision till the next meeting with the Federation. No final decision had then been taken by the Railway Board regarding the implementation of the scheme which was on an experimental basis. The Petitioner in companion Writ Petition No.3087 of 2004, filed an affidavit in reply to the earlier Petition (W.P. 213 of 2003) in which he made the following averments, specifically recognising that the scheme was being operated on an experimental basis as a pilot project :

> "The Petitioner has also suppressed another material fact that in present position and advancement of internet facilities, for the first time the Govt. of India by and through Ministry of Railway have come out with a scheme for provision of Computerised Tickets/(E-Services) by Licensees and decided to select three Licensees in all the Four Metro Cities of Mumbai, Delhi, Chennai & Calcutta as a Pilot Scheme <u>on experimental basis</u> and basically to ease Public Grievances of standing in long queues. I state that

> the Respondents No.1 to 5 vide their reply and Sur-rejoinder by and through their Chief Law Assistant have clarified that the scheme/project will be watched and studied for first six months and after which the continuation of scheme will be considered."

When the earlier petition came up for hearing before a Division Bench of this Court, a statement was made on behalf of the Railway Authorities that the terminals which have been issued to the Petitioners in these proceedings (Respondent Nos.6, 7 and 8 in the earlier petition), were on an experimental basis. This, it was stated, was principally because there was an objection of Railway employees to these terminals being farmed out to private parties. The Division Bench in its order dated 23rd April 2003 recorded that by the end of May 2003, the Railways would take a further decision at which point of time, the eligibility of all concerned parties would be considered. If a decision was taken to continue the system, all eligible persons would be considered. On this foundation, the Division Bench dismissed the earlier petition (Writ Petition 213 of 2003) by its order

dated 23rd April 2003.

The Respondents in the affidavit in reply have stated that these facts have been suppressed from the Court which would disentitle the Petitioner to any relief. Moreover, it has been urged that on 24th June 2003, the Executive Director, Passenger Marketing, Railway Board, informed the Chief Commercial Manager, Central Railway, Mumbai that it would not be possible to take any decision at that stage in isolation as the efficacy and utility of the scheme had to be assessed in totality and the issues had to be discussed with the Federation in order to maintain cordial industrial relations. On 8th September 2004, the Executive Director informed the Chief Commercial Manager of the decision of the Railway Board to terminate the scheme of allotment of Computerized PRS Terminals given to the three licensees in the Mumbai area after due notice under the respective agreements. That decision was acted upon and the licences were terminated.

The Petitioners, as this factual background would

demonstrate, have all along been aware of the fact that the scheme was being implemented on an experimental basis. Indeed, the letters dated 28th September 2000 and 17th January 2000 of the Petitioners in Writ Petition No.3086 of 2004 specifically make a reference to the selection being on an experimental basis. The licences were specifically terminable with three months' notice in view of the provisions of clause 22. The project was reviewed at a policy level and the Railway Board seems to have come to the conclusion that in view of the objection that was raised by the Federation in regard to the impact of the scheme on the provision of employment at the existing Centres maintained by the Railway authorities, it would be in the interest of maintaining industrial relations that the matter be examined not in its isolation, but with reference to the efficacy and utility of the scheme as a whole. There is a specific reference to this in paragraph 7 of the affidavit in reply. In this factual background, we are of the view that a ground for interference of this Court under Article 226 of the Constitution has not been made out. Once a licence is granted under the terms of a contract which renders it terminable on either side, it is impossible for the Court to hold that the doctrine of

promissory estoppel or of legitimate expectation must render the licence irrevocable within the period. That submission cannot be accepted for the simple reason that it would be contrary to the plain terms of the contract between the parties. There cannot be any dispute in regard to the formulation of the doctrine of promissory estoppel which is sought to be relied upon by the Petitioner with reference to the decisions in **Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P**., AIR 1979 SC 621 and **Pawan Alloys & Casting Pvt. Ltd. vs. U.P. State Electricity Board,** 1977 (7) SCC 251. The doctrine is plainly not applicable in the present case since the licence is specifically terminable with notice on either side. We, therefore, do not find any merit in these petitions. While dismissing the petitions, however, we are of the view that it would be only appropriate and proper if we leave it open to the Petitioners to pursue such remedies as they may have, before the competent Civil Court on a claim for damages. We refrain from expressing any view on the merits of any such claim since that does not call for determination at this stage. The petitions are accordingly dismissed, in the circumstances, with no order as to costs.

CHIEF JUSTICE

DR. D. Y. CHANDRACHU, J.